

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Criminal Case No. 02-80586

Civil Case No. 07-11248

HONORABLE PATRICK J. DUGGAN

v.

RONALD LUPO,

Defendant,

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**ORDER DENYING CERTIFICATE OF APPEALABILITY**

At a session of said Court, held in the U.S.  
District Courthouse, Eastern District  
of Michigan, on August 10, 2007.

PRESENT: THE HONORABLE PATRICK J. DUGGAN  
U.S. DISTRICT COURT JUDGE

Defendant Ronald Lupo filed a motion to vacate and set aside his conviction pursuant to 28 U.S.C. § 2255, which this Court subsequently denied. Defendant seeks to appeal the Court's decision and therefore requests a certificate of appealability from this Court. 28 U.S.C. § 2253(c)(1)(B).

Section 2253 provides that a certificate of appealability may issue only if the applicant makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). As the Supreme Court has stated:

“[T]he petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different

manner] or that the questions are ‘adequate to deserve encouragement to proceed further.’”

*Barefoot v. Estelle*, 463 U.S. 880, 893 n.4, 103 S. Ct. 3383, 3394 n.4 (1983) (quoting *Gordon v. Willis*, 516 F. Supp. 911, 913 (N.D. Ga. 1980)). As the Supreme Court more recently stated, when a district court denies a habeas petition on the merits of the claims, a certificate may issue only if the applicant demonstrates that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000).

This Court dismissed Defendant’s Section 2255 motion on its merits. The Court concluded that Defendant’s appellate counsel was not ineffective for failing to raise on appeal an issue regarding the sufficiency of evidence to support his conviction. The Court concludes that reasonable jurists would not find its assessment of Defendant’s claim debatable or wrong.

Accordingly, the Court holds that Defendant is not entitled to a certificate of appealability and DENIES the request.

**SO ORDERED.**

s/PATRICK J. DUGGAN  
UNITED STATES DISTRICT JUDGE

Copies to:  
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